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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0661**

Scott G. Erickson, et al.,
Appellants,

vs.

Abby Science, Inc. d/b/a Quality Blending, Inc., et al.,
Respondents.

**Filed January 2, 2018
Affirmed
Johnson, Judge**

Anoka County District Court
File No. 02-CV-15-1850

Bryan R. Battina, Nathan R. Snyder, Trepanier MacGillis Battina P.A., Minneapolis,
Minnesota (for appellants)

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Considered and decided by Ross, Presiding Judge; Johnson, Judge; and Klaphake,
Judge.*

UNPUBLISHED OPINION

JOHNSON, Judge

A company leased a commercial building for approximately five years before the
landlords terminated the lease. Nearly six years later, the landlords sued, alleging that the

*Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant
to Minn. Const. art. VI, § 10.

tenant caused damage to the property during its tenancy. The district court granted summary judgment to the former tenant on the ground that the landlords' action is barred by the statute of limitations because the landlords were aware of the facts supporting their claims more than six years before they commenced this action. We conclude that the former tenant is not equitably estopped from asserting a statute-of-limitations defense and that the landlords' claims are time-barred. Therefore, we affirm.

FACTS

Scott G. Erickson and Laura W. Erickson own an 11,000-square-foot building in the city of Ham Lake. In May 2004, the Ericksons leased the building to Abby Science, Inc., pursuant to a 15-page lease agreement. The term of the lease was three years, beginning July 1, 2004, with a monthly rent of \$4,140. Gregg Boster, the president of Abby Science, signed the lease agreement on behalf of the company and provided a personal guaranty of all covenants contained in the lease agreement.

The provisions of the lease agreement that are most pertinent to this appeal are the following:

8. REPAIRS AND TERMINAL CONDITION:

[1] Tenant shall, at Tenant's sole cost and expense, keep in good order, condition, and repair the Demised Premises and every part thereof, including, without limiting the generality of the foregoing, all heating and air-conditioning units, plumbing, electrical and lighting fixtures and equipment, fixtures, interior wall and ceilings, floors, windows, doors, plate glass and skylights located within the Demised Premises, but excluding all other structural repairs. [2] This is to include an obligation to contract for preventative maintenance to heating and air-conditioning equipment. [3] On the last day of the term hereof, or any earlier termination thereof, Tenant shall surrender the

Demised Premises to Landlord in good condition, with only ordinary wear expected. [4] Tenant shall also pay all costs incurred in replacing any plumbing or lighting fixtures which may have been removed from the Demised Premises by Tenant. [5] Also, Tenant shall not move, remove or otherwise disturb or make changes in the heating equipment and shall be liable to Landlord for any damage to such equipment. [6] Thirty days prior to the end of the term of this Lease, Landlord and Tenant, or their representatives, shall inspect the Demised Premises and settle any difference in accordance with the terms of this Lease, and arrange for termination of utilities and adjustment of Tenant's pro rata share of Operating Expenses, as set forth in Paragraph 34 hereof.

....

17. DEFAULTS:

Should Tenant breach any of the terms of this Lease, . . . Landlord shall give Tenant notice of such breach and Tenant shall commence to cure such breach within ten (10) days following the giving of such notice and shall diligently proceed with and complete the curing of such breach within a reasonable time.

If Tenant . . . breaches any of the other covenants or obligations of this Lease and fails to cure such breach after notice as herein above provided, Landlord shall have the option to terminate this Lease or to re-enter and take possession of the Demised Premises without terminating this Lease. If Landlord elects to re-enter and take possession without terminating this Lease, Landlord may relet the Demised Premises or any part thereof upon such terms and conditions as Landlord in its sole discretion shall deem advisable. . . .

....

43. WELL AND SEPTIC SYSTEM:

Building is hooked up to a private well and septic system located on the property, which Landlord certifies is currently working properly and conforms to current building codes. Tenant shall not permit any hazardous wastes or

chemicals to enter the septic system and shall be responsible for any cleanup expense, if found in violation of the Lease Agreement.

Abby Science used the leased premises to mix and bottle chemicals that it sold to its customers. Shortly after Abby Science took possession of the premises, the Ericksons expressed concerns that Abby Science was violating the terms of the lease agreement. On October 13, 2004, Scott Erickson sent a letter to Boster in which he raised various issues.

The lease was renewed in July 2007. Disputes arose again in 2008. The Ericksons and Abby Science exchanged correspondence between January and July of 2008. On August 26, 2008, an attorney representing the Ericksons sent a letter to an attorney representing Abby Science to give formal notice that the Ericksons considered Abby Science to be in default of its lease obligations. The letter enumerated 12 issues and stated that, under paragraph 17 of the lease agreement, Abby Science had ten days to cure the alleged breaches of the lease agreement. Two days later, Abby Science's attorney sent a letter to the Ericksons' attorney in response to each of the 12 issues. Abby Science's attorney referred to two issues as "terminal conditions" that could be addressed at the end of the tenancy.

In February 2009, the Ericksons retained a consultant to perform an environmental study of the property. On February 23, 2009, the consultant delivered a report, which concluded that Abby Science had used and disposed of hazardous chemicals at the property, in violation of paragraph 43 of the lease agreement. On February 27, 2009, an attorney representing the Ericksons sent a letter to Boster to give notice of the termination

of Abby Science's tenancy, effective April 30, 2009. Abby Science vacated the premises on April 30, 2009.

On February 26, 2015, approximately five years and ten months after Abby Science vacated the premises, the Ericksons commenced this action against Abby Science and Boster. The complaint asserts two causes of action: breach of contract and fraudulent misrepresentation. The complaint alleges that Abby Science and Boster breached the lease agreement in 17 ways:

[1] failing to pay rent for the entire lease term; [2] polluting the property; [3] damaging the lawn; [4] processing and utilizing prohibited hazardous chemicals which damaged the Building and surrounding property; [5] damaging and removing custom cabinetry; [6] damage to the Building; [7] removing items from the shop area; [8] bulldozing class 5 material from the back lot and into valuable trees; [9] damaging large sections of the parking lot; [10] removing high grade office carpet and replacing it with low grade carpet; [11] damage to the electrical systems; [12] removing the phone system; [13] disabling and removing fire monitoring system; [14] damaging the audio sound and PA system; [15] not maintaining the furnace; [16] removing plumbing systems and lights; and [17] destroying cubicle partitions.

In essence, the parties and the district court construed the complaint to allege 17 breach-of-contract claims; for ease of reference, we will use the same convention. The complaint also alleges that Abby Science and Boster committed fraud by making "numerous misrepresentations concerning the safety of the chemicals being used at the building, that they were not polluting the building or the surrounding property and that no chemicals would be or were being discharged into the septic system."

In June 2015, Abby Science moved for dismissal or for summary judgment on the ground that the Ericksons' claims are barred by the applicable six-year statute of limitations. In response, the Ericksons argued that Abby Science's limitations defense is barred by the doctrine of equitable estoppel and that their claims did not accrue until Abby Science vacated the premises on April 30, 2009.

The district court granted Abby Science's motion in part and denied it in part. The district court rejected the Ericksons' equitable-estoppel argument on the ground that, if Abby Science made any promises to repair damage caused during its tenancy, the Ericksons' reliance on those promises was not reasonable. The district court reasoned that six of the Ericksons' breach-of-contract claims (specifically, claims 1, 6, 11, 12, 13, and 14) are not time-barred because the Ericksons first became aware of the facts underlying those claims when Abby Science vacated the premises, which was less than six years before the Ericksons commenced the action. (Those claims subsequently were resolved by a settlement agreement and, thus, are not at issue in this appeal.) But the district court reasoned that the Ericksons' other breach-of-contract claims are time-barred because they accrued "when [the Ericksons] observed the breaches and first notified [Abby Science] of these alleged breaches," which occurred before Abby Science vacated the premises and more than six years before the Ericksons commenced this action with respect to 11 of its breach-of-contract claims and its fraud claim. And the district court reasoned that the Ericksons' fraud claim is time-barred because it accrued no later than when they received the consultant's report. The Ericksons appeal.

DECISION

The Ericksons argue that the district court erred by granting Abby Science's motion. The district court noted that Abby Science moved both to dismiss under rule 12 or for summary judgment under rule 56.02. *See* Minn. R. Civ. P. 12.02(e), 56.02. Ordinarily, if a defendant moves to dismiss under rule 12.02(e), a district court may consider documents other than the pleadings only if the documents are attached to a pleading or are referenced in a pleading. *See, e.g., Hardin County Sav. Bank v. Housing & Redevelopment Auth. of Brainerd*, 821 N.W.2d 184, 192 (Minn. 2012). But a motion to dismiss pursuant to rule 12.02 may be converted to a motion for summary judgment:

If . . . matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided for in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

Minn. R. Civ. P. 12.03; *see also* Minn. R. Civ. P. 12.02(e). At oral argument in this court, counsel for the parties agreed that the district court treated Abby Science's motion to dismiss as a motion for summary judgment. We agree and, thus, will treat the motion as a motion for summary judgment.

A district court must grant a motion for summary judgment if the evidence demonstrates "that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03. A genuine issue of material fact exists if a rational trier of fact, considering the record as a whole, could find for the non-moving party. *Frieler v. Carlson Mktg. Grp., Inc.*, 751 N.W.2d 558, 564 (Minn. 2008) (quotation omitted). This court applies a *de novo* standard of review to the

district court's legal conclusions on summary judgment and views the evidence in the light most favorable to the non-moving party. *RAM Mut. Ins. Co. v. Rohde*, 820 N.W.2d 1, 6 (Minn. 2012) (quotations omitted); *Day Masonry v. Independent Sch. Dist. No. 347*, 781 N.W.2d 321, 325 (Minn. 2010).

I. Breach-of-Contract Claim

A. Equitable Estoppel

The Ericksons argue that the district court erred by ruling that Abby Science is not equitably estopped from asserting a statute-of-limitations defense.

The equitable estoppel doctrine “is intended to prevent a party from taking unconscionable advantage of his own wrong by asserting his strict legal rights.” *Northern Petrochemical Co. v. U.S. Fire Ins. Co.*, 277 N.W.2d 408, 410 (Minn. 1979). The doctrine may be invoked to preclude a party from asserting a statute-of-limitations defense. *Id.* at 410-11. More specifically, the doctrine may be invoked to preclude a party from asserting a statute-of-limitations defense after that party has promised to make repairs to a building. *Hydra-Mac, Inc. v. Onan Corp.*, 450 N.W.2d 913, 919-20 (Minn. 1990). “A party seeking to invoke the doctrine of equitable estoppel has the burden of proving three elements: (1) that promises or inducements were made; (2) that it reasonably relied upon the promises; and, (3) that it will be harmed if estoppel is not applied.” *Id.* at 919. Equitable estoppel “is an equitable doctrine addressed to the discretion of the court.” *Northern Petrochemical*, 277 N.W.2d at 410. Accordingly, we apply an abuse-of-discretion standard of review to a district court's application of the doctrine. *See id.* at 410-11.

In this case, the district court refrained from determining whether the Ericksons could satisfy the first requirement of the doctrine. The district court stated that Abby Science “may have made promises to Plaintiffs about making various repairs including completing repairs by termination of their tenancy.” The district court determined that the Ericksons could not satisfy the second requirement of the doctrine. The district court stated that “Plaintiffs . . . cannot prove their reliance on Defendants’ promises was reasonable.” The district court recited the supreme court’s statement that the “[i]nvocation of equitable estoppel may be denied when the party asserting it has failed to exercise due diligence in filing its action after the grounds giving rise to the claimed estoppel have ceased to exist.” *See Hydra-Mac*, 450 N.W.2d at 919. The district court noted that Abby Science “vacated in 2009 without making the repairs Plaintiffs claim they were promised” yet “Plaintiffs did not commence this action until 5 years and 10 months after Defendants’ tenancy ended.” For that reason, the district court concluded, “It is not reasonable for Plaintiffs’ counsel to rely on Defense counsel’s legal opinion that the alleged breaches were terminal and did not have to be remedied until the end of the lease.”

The district court’s analysis of the Ericksons’ equitable-estoppel argument is consistent with the applicable caselaw. The diligence of the party invoking the doctrine is relevant to the second requirement, which asks whether the “actions or inactions” of the party invoking equitable estoppel “relating to [the] timely assertion of its claims [are] reasonable when viewed in the light of all existing circumstances.” *Id.* In *Singelman v. St. Francis Medical Center*, 777 N.W.2d 540 (Minn. App. 2010), this court affirmed a district court’s entry of summary judgment because the plaintiff’s asserted grounds for

equitable estoppel “would have disappeared, at the latest, a month or two after” they first appeared. *Id.* at 541-42, 544. Similarly, in *The Rivers v. Richard Schwartz/Neil Weber Inc.*, 459 N.W.2d 166 (Minn. App. 1990), *review denied* (Minn. Oct. 25, 1990), this court affirmed a district court’s entry of summary judgment on the issue of equitable estoppel because, even though a defendant had given assurances that repairs would be made, the defendant did not actually make any repairs during the five-year period before the action was commenced. *Id.* at 170. The facts of this case are remarkably similar to *Singelman* and *The Rivers*. The Ericksons claim to have relied on promises made by Abby Science to repair damage to the building, but those promises were made during Abby Science’s tenancy and proved to be unreliable when Abby Science vacated the premises on April 30, 2009. Yet the Ericksons waited five years and ten months before commencing this action.

In their appellate briefs, the Ericksons dwell on their evidence that Abby Science made promises to repair damage to the property and their evidence that they relied on those promises. Their argument misses the point of the district court’s ruling. The district court did not determine whether, *during* Abby Science’s tenancy, the Ericksons were reasonable in relying on Abby Science’s alleged promises. Rather, the district court determined that, *after* Abby Science’s tenancy, the Ericksons no longer were reasonable in relying on any promises Abby Science may have made. The Ericksons’ failure to take prompt action after Abby Science’s tenancy, which concluded on April 30, 2009, is pertinent because, as stated above, the “invocation of equitable estoppel may be denied when the party asserting it has failed to exercise due diligence in filing its action after the grounds giving rise to the claimed estoppel have ceased to exist.” *See Hydra-Mac*, 450 N.W.2d at 919. The district

court appropriately determined that the Ericksons could not have reasonably relied on any prior promises made by Abby Science after it vacated the premises and that the Ericksons were not diligent in pursuing their claims after Abby Science vacated the premises. The district court did not abuse its discretion in so reasoning, which means that the Ericksons cannot satisfy the second requirement of the doctrine of equitable estoppel.¹

Thus, the district court did not err by concluding that Abby Science is not equitably estopped from asserting a statute-of-limitations defense with respect to the 11 breach-of-contract claims at issue in this appeal.

B. Statute of Limitations

The Ericksons argue that the district court erred by ruling that 11 of their breach-of-contract claims are barred by the applicable statute of limitations.

A breach-of-contract claim is governed by a six-year statute of limitations. Minn. Stat. § 541.05, subd. 1(1), (6) (2016). The statute of limitations begins to run when “the cause of action accrues.” Minn. Stat. § 541.01 (2016). “A cause of action accrues when all of the elements of the action have occurred, such that the cause of action could be brought and would survive a motion to dismiss for failure to state a claim.” *Park Nicollet Clinic v. Hamann*, 808 N.W.2d 828, 832 (Minn. 2011). The elements of a breach-of-

¹We note that the Ericksons did not assert an equitable-tolling argument to the district court and have not made such an argument to this court. Accordingly, the question is not whether the statute of limitations was tolled for part of the six-year period before the Ericksons commenced this action. See *Buller v. A.O. Smith Harvestore Prods., Inc.*, 518 N.W.2d 537, 542 (Minn. 1994); *Hydra-Mac*, 450 N.W.2d at 918-19; *Wild v. Rarig*, 302 Minn. 419, 450-51, 234 N.W.2d 775, 795 (1975). Rather, under the doctrine of equitable estoppel, the question is whether the defendant may or may not assert a statute-of-limitations defense. See *Hydra-Mac*, 450 N.W.2d at 919-20.

contract claim are as follows: “(1) the formation of a contract, (2) the performance of conditions precedent by the plaintiff, and (3) the breach of the contract by the defendant.” *Thomas B. Olson & Assocs. v. Leffert, Jay & Polglaze, P.A.*, 756 N.W.2d 907, 918 (Minn. App. 2008), *review denied* (Minn. Jan. 20, 2009).

In this case, the district court reasoned that the 11 breach-of-contract claims at issue accrued when the Ericksons became aware of the facts underlying those alleged breaches in 2004, 2008, and early 2009. The district court’s reasoning is supported by evidence that the Ericksons or their attorney sent multiple letters to Abby Science between 2004 and 2009, asserting that Abby Science was in violation of the lease. The district court stated that the Ericksons were aware of the facts underlying all 11 of the breach-of-contract claims at issue by not later than February 23, 2009, which is more than six years before the Ericksons commenced this action. If the analysis is limited in that way, the resolution of the Ericksons’ argument would be clear: their breach-of-contract claim accrued more than six years before they commenced this action on February 26, 2015.

But the Ericksons contend that the district court’s analysis is flawed because some of their breach-of-contract claims did not accrue, or did not fully accrue, until after Abby Science vacated the property. For this contention, the Ericksons rely on the third sentence of paragraph 8 of the lease agreement, which states, “On the last day of the term hereof, or any earlier termination thereof, Tenant shall surrender the Demised Premises to Landlord in good condition, with only ordinary wear expected.” The Ericksons contend that this provision does not impose any obligations on Abby Science until the end of the tenancy and, thus, cannot be breached until such time. Under the Ericksons’ theory, they may rely

on more than one provision of the lease agreement in asserting a breach-of-contract claim based on a particular alleged harm, and a breach-of-contract claim based on a particular alleged harm does not accrue until all relevant contractual provisions are triggered.

The Ericksons do not cite any caselaw to support their contention. We are unaware of any Minnesota caselaw that speaks directly to the issue. Our research has revealed only two opinions from other jurisdictions that might support the Ericksons' contention, but it is unclear in each opinion whether the same issue was expressly raised and disputed by the parties. *See Highland Indus. Park, Inc. v. BEI Defense Sys. Co.*, 357 F.3d 794, 798-99 (8th Cir. 2004); *Ace Sec. Corp. v. DB Structured Prods., Inc.*, 36 N.E.3d 623, 628-30 (N.Y. 2015).

Notwithstanding the absence of Minnesota caselaw directly on point, we believe that the supreme court's caselaw applying the statute of limitations sets forth principles that are inconsistent with the Ericksons' contention. For example, in *Hamann*, which concerned a breach-of-contract claim, the supreme court focused on "the wrongful conduct underlying the breach of contract claim." 808 N.W.2d at 833. The supreme court resolved the dispute in that appeal by focusing on the date on which the breach-of-contract claim "would have survived a motion to dismiss." *Id.* In *Portlance v. Golden Valley State Bank*, 405 N.W.2d 240 (Minn. 1987), which also concerned a breach-of-contract claim, the supreme court noted that "the statutory limitations period cannot be manipulated by the relief sought." *Id.* at 242. Likewise, in *Weavewood, Inc. v. S & P Home Investments, LLC*, 821 N.W.2d 576 (Minn. 2012), a case in which the plaintiff sought a declaratory judgment, the supreme court stated that "we cannot allow plaintiffs to make a mockery of statutes of

limitations by the simple expedient of creative labeling.” *Id.* at 580 (alterations and internal quotations omitted) (quoting *International Ass’n of Machinists & Aerospace Workers v. Tennessee Valley Auth.*, 108 F.3d 658, 668 (6th Cir. 1997)). Rather, the supreme court stated, “the applicability of statutes of limitations depends on the nature of the wrong alleged in the complaint, *not* on the nature of the relief sought.” *Id.* at 580.

In light of these principles, the district court did not err by concluding that the Ericksons’ breach-of-contract claims accrued not later than February 23, 2009, which was more than six years before the Ericksons commenced this action. The district court’s analysis appropriately focused on the dates of “the wrongful conduct underlying the breach of contract claim,” of which the Ericksons were aware before Abby Science vacated the premises. *See Hamann*, 808 N.W.2d at 833. By February 23, 2015, the Ericksons’ breach-of-contract claims, which are based on multiple violations of the lease agreement, “would have survived a motion to dismiss.” *See id.* To allow the Ericksons to restart the limitations period based on the obligation in the third sentence of paragraph 8 would violate the supreme court’s acknowledgement that “the statutory limitations period cannot be manipulated by the relief sought.” *See Portlance*, 405 N.W.2d at 242. In addition, to allow the Ericksons to restart the limitations period on April 30, 2009, based on facts of which they previously were aware, would risk “mak[ing] a mockery of statutes of limitations by the simple expedient of creative labeling.” *See Weavewood*, 821 N.W.2d at 580 (alterations and internal quotations omitted). Implementing these principles ensures that we do not “undermine the fundamental purposes of statutes of limitations—namely, ‘to spare the courts from litigation of stale claims, and the citizen from being put to his defense after

memories have faded, witnesses have died or disappeared, and evidence has been lost.”
Id. (quoting *Chase Sec. Corp. v. Donaldson*, 325 U.S. 304, 314, 65 S. Ct. 1137, 1142 (1945)).

Thus, the district court did not err by determining that the Ericksons’ breach-of-contract claims accrued more than six years before they commenced this action.

C. Waiver

The Ericksons argue that Abby Science waived its statute-of-limitations defense. The Ericksons assert that Abby Science’s attorney waived the defense in communications with the Ericksons’ attorney. The Ericksons did not make this argument to the district court in their opposition to Abby Science’s motion. Thus, the argument has been forfeited, and we will not consider it for the first time on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988); *Doe 175 v. Columbia Heights Sch. Dist., ISD No. 13*, 842 N.W.2d 38, 43 (Minn. App. 2014).

II. Fraud Claim

A. Equitable Estoppel

The Ericksons argue that the district court erred by ruling that Abby Science is not equitably estopped from asserting a statute-of-limitations defense to their fraud claim. The district court applied the doctrine of equitable estoppel to the Ericksons’ breach-of-contract claims and their fraud claim in the same manner. The Ericksons do not argue that the district court erred by analyzing the issue in that manner. The Ericksons also do not contend that the analysis should be different for their fraud claim than for their breach-of-contract claims. In fact, the Ericksons make essentially the same argument with respect to

each claim. The Ericksons' equitable-estoppel argument concerning their fraud claim fails for the same reason that their equitable-estoppel argument concerning their breach-of-contract claims fail. Thus, the district court did not err by concluding that Abby Science is not equitably estopped from asserting a statute-of-limitations defense with respect to the Ericksons' fraud claim.

B. Statute of Limitations

The Ericksons argue that the district court erred by ruling that their fraud claim is barred by the applicable statute of limitations.

A fraud claim is governed by a six-year statute of limitations. Minn. Stat. § 541.05, subd. 1(6). "The 6-year period begins to run when the facts constituting fraud were discovered or, by reasonable diligence, should have been discovered." *Toombs v. Daniels*, 361 N.W.2d 801, 809 (Minn. 1985). The elements of a fraud claim are as follows:

(1) there was a false representation by a party of a past or existing material fact susceptible of knowledge; (2) made with knowledge of the falsity of the representation or made as of the party's own knowledge without knowing whether it was true or false; (3) with the intention to induce another to act in reliance thereon; (4) that the representation caused the other party to act in reliance thereon; and (5) that the party suffer[ed] pecuniary damage as a result of the reliance.

Hoyt Props., Inc. v. Production Res. Group, L.L.C., 736 N.W.2d 313, 318 (Minn. 2007) (quotation omitted) (alteration in original); see also *Martens v. Minnesota Mining & Mfg. Co.*, 616 N.W.2d 732, 747 (Minn. 2000) (articulating similar seven-factor test); *Davis v. Re-Trac Mfg. Corp.*, 276 Minn. 116, 117, 149 N.W.2d 37, 38-39 (1967) (articulating similar eleven-factor test).

In this case, the district court determined that the Ericksons discovered Abby Science's alleged fraud as early as October 13, 2004, when the Ericksons first expressed concerns that Abby Science was using hazardous chemicals on the premises, but not later than February 23, 2009, when the Ericksons received the consultant's report, which confirmed their belief that Abby Science was using hazardous chemicals on the premises. Even the latter of those two dates is more than six years before the Ericksons commenced this action, which would make the Ericksons' action untimely.

The Ericksons contend, however, that their fraud claim did not accrue until after Abby Science vacated the premises on April 30, 2009. They contend that, during the tenancy, Abby Science stated "that they would repair the property" but that, after the tenancy, the Ericksons observed that Abby Science had not done so. But according to the complaint, the alleged misrepresentation that is the basis of the Ericksons' fraud claim was made "[p]rior to and during the lease" and was "relied on" by the Ericksons "in deciding to enter into the lease and in deciding not to terminate the tenancy," which implies that the Ericksons ceased relying on the alleged misrepresentations when they actually terminated the lease on February 27, 2009. The fraudulent nature of the alleged misrepresentations by Abby Science either was actually "discovered or, by reasonable diligence, should have been discovered," by not later than February 23, 2009, when the Ericksons received the consultant's report. *See Toombs*, 361 N.W.2d at 809. The Ericksons have not cited any caselaw for the proposition that a fraud claim does not accrue until the allegedly fraudulent party fails to cure the alleged fraud. Our caselaw suggests otherwise. *See Ames & Fischer Co. v. McDonald*, 798 N.W.2d 557, 563-64 (Minn. App. 2011) (concluding that

professional malpractice claim accrued when accountant filed tax returns, not when amended returns could have been but were not filed), *review denied* (Minn. Jul. 19, 2011).

Thus, the district court did not err by determining that the Ericksons' fraud claim accrued more than six years before they commenced this action.

In sum, the district court did not err by granting Abby Science's motion for summary judgment with respect to 11 of the Ericksons' breach-of-contract claims and their fraud claim.

Affirmed.